



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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September 2, 1988

Dear Mr. :

This is in response to your letter of August 8, 1988 requesting advice regarding the application of Property Tax Rule 462.5.

Your letter states that your client, Mr. [redacted] owned a 50% interest as tenant in common in property located at [redacted] in the City of [redacted]. The building was utilized as a multi-tenant commercial building rented to approximately 30 retail merchants. The property was operated as [redacted]. Pursuant to an eminent domain action, the City of [redacted] took possession of the building on August 1, 1986.

You ask whether certain replacement property will satisfy the comparability requirements of subdivision (c) of Rule 462.5. You describe the replacement as "industrial rental property" in which a majority of the space will be rented to light manufacturing companies. A small portion may be rented to retail businesses. You state that the property may have a different zoning from the [redacted] since a multi-tenant industrial park would be zoned differently from a building leased to retail businesses.

Subdivision (c) of Rule 462.5 states, in pertinent part, that replacement property shall be deemed comparable to the replaced property if it is similar in size, utility, and function. Further, property is similar in function if the replacement property is subject to "similar governmental restrictions, such as zoning." Subdivision (c) also states that property is also similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken. This language distinguishes between various types of uses including commercial and industrial. Nothing in the rule expressly states, however,

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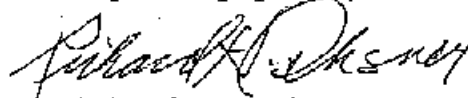
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whether or not property rented for light manufacturing purposes would be considered comparable to property rented for retail shop purposes.

Based upon the facts presented, it is clear that there are some differences between the replacement property and the property taken. It is not clear, however, whether those differences are so substantial as to require the conclusion that the properties are not comparable for purposes of subdivision (c). For example, the property must be subject to "similar" zoning but it is not necessary that the zoning be identical. Although you state that the property would probably have different zoning, there is not enough information to determine whether the replacement property zoning would be considered "similar." An evaluation of this question probably requires some understanding of the county zoning system and the principles on which the various distinctions rest. Further, it is not clear from the facts whether the proposed replacement property would be considered commercial or industrial in its use. It appears that these are issues which are best determined at the local level by the county assessor who will have a better understanding of the similarities or dissimilarities of the subject properties. We would also point out that any advice we could provide on this issue would be advisory only and not binding upon the county assessor. For these reasons, we recommend that you consult with the Orange County Assessor to determine how he would apply Rule 462.5 to the proposed property.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
1557D

cc: Hon.

County Assessor
Mr. Robert H. Gustafson
Mr. Verne Walton